

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-185159

DATE: DEC 19 1975

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MATTER OF: Department of Treasury - emergency food purchases

DIGEST: The cost of providing food to investigative agents of the Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury, who were investigating a bombing of ATF offices in San Francisco and could not leave their posts is not reimbursable due to the general rule that in the absence of authorizing legislation, the cost of meals furnished to Government employees may not be paid with appropriated funds.

We have received a letter dated October 8, 1975, from Ms. Marie A. Watkins, Authorized Certifying Officer, Bureau of Alcohol, Tobacco, and Firearms (ATF), Department of the Treasury, requesting our decision concerning payment for food provided to agents of ATF under certain emergency conditions.

Under the authority contained in 31 U.S.C. 824, a certifying officer is entitled to a decision by the Comptroller General on a question of law involved in payment on a specific voucher if has been presented to him for certification prior to payment on the voucher, which should accompany the submission to the department. See 53 Comp. Gen. 71 (1972).

While no voucher accompanied the request for decision, we are rendering our decision under the broad authority of 31 U.S.C. 71 which authorizes us to provide decisions to heads of departments on any question involved in payments which may be made by the department.

In describing the circumstances giving rise to the request, Ms. Watkins states that on July 21, 1975, the ATF office located on the thirty-fourth floor at 525 Market Street, San Francisco, was bombed. The Regional Director of ATF felt that it was in the best interest of the Bureau to have ATF agents investigate the bombing immediately for possible clues that could lead to the identification of the party responsible for the bombing. ATF agents worked for over 24 hours until their investigation was complete. Because of the lateness of the hour, the emergency nature of measures in effect in the immediate building area, and the inoperable elevators, food was brought in for the agents.

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It is a well-established rule that the Government may not pay the subsistence expenses of or furnish free food to civilian employees from appropriated funds without specific authority of law. 53 Comp. Gen. 71 (1973); 42 id. 149 (1962). This rule has been applied even though the employees may have been working under unusual circumstances.

In 16 Comp. Gen. 158 (1936), reimbursement for meal expenses was denied to an Internal Revenue investigator required to perform twenty-four hour daily duty on a special assignment at headquarters. The memorandum accompanying that request for decision stated in part that:

"* * * this investigator was maintaining a twenty-four hour supervision of a telephone in connection with a conspiracy case involving smuggling. It was impossible to relieve this investigator due to the post of observation being in a neighborhood which would easily cause suspicion if strange persons were in the vicinity. Furthermore, it was necessary that this investigator supervise this telephone at all times as he was the only investigator who recognized the voices of the persons under investigation."

The investigator was required to purchase his food in the home where the observation post was maintained. Reimbursement for the investigator's expenses of obtaining food at his post of observation was denied even though the investigator had apparently no viable alternative means of obtaining food.

In 42 Comp. Gen. 149 (1962), reimbursement to a Post Office Department official was denied for expenditures made by him from personal funds to provide carry-out restaurant food for postal employees who were required to remain on duty beyond regular office hours in order to conduct an internal election. Reimbursement was denied even though "the expenditures for food for the team members were made as a result of lack of facilities within the building and the absolute necessity of their remaining constantly available. . ."

One decision, 53 Comp. Gen. 71 (1973), did allow reimbursement of food expenses where the expenditure was made under exceptional circumstances. In that case, food was provided to GSA Federal Protective Services Officers who were assembled in readiness to reoccupy

a building of the Bureau of Indian Affairs which had been occupied by force. The police force was under orders to remain on duty until relieved and were equipped for such disturbances as riots, fires, or retaking of the building. Part of the food was provided to the special police by GSA officials and part was supplied by Government Services, Inc. (GSI).

Our decision to authorize the expenditure for food emphasized "the existence of an extremely emergent situation involving danger to human life and the destruction of Federal property." The decision stated that "such cases are rare" but did not attempt to describe the circumstances under which similar payments would be deemed proper. Rather, it stated that:

"However, whether payment of such expenses would be proper in similar cases that may arise in the future would necessarily depend on the facts and circumstances present in each case, having in mind that work in occupations such as those of policemen, firemen, and security guards, etc., often is required to be performed under emergent and dangerous conditions and that such fact alone does not warrant departure from the general rule against payment for employees' meals from appropriated funds."

Thus even if the conditions are emergent or dangerous, this alone does not warrant departure from the general rule against payment for employees' meals from appropriated funds. It is necessary to find that the situation involves imminent "danger to human life and destruction of property." Id.

The facts of the present case do not satisfy the very limited exception of 53 Comp. Gen. 71 (1973), discussed immediately above. In the present case, the expenditure for food did not occur "during an extremely emergent situation involving danger to human life and the destruction of Federal property." Id. The bombing had already occurred, and there was no suggestion that another bombing was imminent. Thus the agents were not engaged in activities to prevent imminent danger to human life or Federal property, but were only investigating a dangerous situation which had already occurred. Furthermore, it is not unusual that investigative personnel be required to work extended hours nor that an area which they are investigating be cordoned off from the public.

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It is well established that no person is authorized to make himself a voluntary creditor of the United States by incurring and paying obligations of the Government which he is not legally required or authorized to incur or pay and reimbursement therefore is generally not authorized. 42 Comp. Gen. 149 (1962); B-129004 (September 6, 1956). Thus the agent who made the expenditure for food for his fellow employees may not be reimbursed from appropriated funds.

RECOMMENDATION

Deputy

Comptroller General
of the United States